

A. Disclosures of Return Information for Student Aid Purposes

Present Law

Income-contingent loan verification program

Present law prohibits the disclosure of returns and return information, except to the extent specifically authorized by the Code.¹ An exception is provided for disclosure to the Department of Education (but not to contractors thereof) of a taxpayer's filing status, adjusted gross income and identity information (i.e., name, mailing address, taxpayer identifying number) to establish an appropriate repayment amount for an applicable student loan.² The Department of Education disclosure authority is scheduled to expire after December 31, 2004.³

An exception to the general rule prohibiting disclosure is also provided for the disclosure of returns and return information to a designee of the taxpayer.⁴ Because the Department of Education utilizes contractors for the income-contingent loan verification program, the Department of Education obtains taxpayer information by consent under section 6103(c), rather than under the specific exception.⁵ The Department of Treasury has reported that the Internal Revenue Service processes approximately 100,000 consents per year for this purpose.⁶

Verifying financial aid applications

The Higher Education Act of 1998 ("Higher Education Act") authorized the Department of Education to confirm with the Internal Revenue Service four discrete items of return information for the purposes of verifying of student aid applications.⁷ The Higher Education Act, however, did not amend the Code to permit disclosure for this purpose. Therefore, the disclosure provided by the Higher Education Act may not be made unless the taxpayer consents to the disclosure under section 6103(c).

¹ Sec. 6103.

² Sec. 6103(l)(13).

³ Pub. L. No. 108-89, sec. 201 (2003).

⁴ Sec. 6103(c).

⁵ Department of Treasury, *Report to the Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions, Volume I: Study of General Provisions* (October 2000) at 91.

⁶ Department of Treasury, *General Explanations of the Administration's Fiscal Year 2004 Revenue Proposals* (February 2003), p. 133.

⁷ Pub. L. No. 105-244, sec. 483 (1998).

The financial aid application is submitted to the Department of Education and is then given to a contractor for processing. Based on the information given, the contractor calculates an expected family contribution that determines the amount of aid a student will receive. All Department of Education financial aid is disbursed directly through schools or various lenders.

The Department of Education requires schools to verify the financial aid information of 30 percent of the applicants. The applicants must furnish a copy of their tax returns. The applicants are not required to obtain copies of tax returns from the IRS or to produce certified copies. If the information reflected on the student's copy of the tax return does not match the information on the financial aid application, the school requires corrective action to be taken before a student receives the appropriate aid.

The Office of Inspector General of the Department of Education has reported that, because many applicants are reporting incorrect information on their financial aid applications, erroneous overpayments of Federal Pell grants have resulted.

Overpayments of Pell grants and defaulted student loans

For purposes of locating a taxpayer to collect an overpayment of a Federal Pell grant or to collect payments on a defaulted loan, the Internal Revenue Service may disclose the taxpayer's mailing address to the Department of Education.⁸ To assist in locating the defaulting taxpayer, the Department of Education may redisclose the mailing address to the officers, employees and agents of certain lenders, States, nonprofit agencies, and educational institutions whose duties relate to the collection of student loans.⁹

Safeguard procedures and recordkeeping

Federal and State agencies that receive returns and return information are required to maintain a standardized system of permanent records on the use and disclosure of that information.¹⁰ Maintaining such records is a prerequisite to obtaining and continuing to obtain returns and return information. Such agencies must also establish procedures satisfactory to the IRS for safeguarding the information it receives. The IRS must also file annual reports with the House Committee on Ways and Means, the Senate Committee on Finance, and the Joint Committee on Taxation regarding procedures and safeguards followed by recipients of return and return information.¹¹

⁸ Sec. 6103(m)(4).

⁹ *Id.*

¹⁰ Sec. 6103(p)(4).

¹¹ Sec. 6103(p)(5).

Description of Proposal

Under the proposal, the Secretary of Treasury is authorized to disclose certain types of information to the Department of Education upon written request by the Secretary of Education. Disclosure may be made to: (1) a person who has applied for a grant, loan, benefit, or work assistance under title IV of the Higher Education Act, (2) a person seeking income contingent repayment on an applicable student loan, (3) an individual who is a dependent student and who has applied for assistance is the parent of such individual, or (4) an individual who is an independent student and who has applied for assistance is the spouse of such individual.¹²

Disclosure of such information may be made for the following purposes: (1) verifying information in connection with any application for a grant, loan, benefit or work assistance, (2) determining income contingent repayment amounts and scheduling on an applicable student loan, (3) collecting overpayments of grants or loans by means of litigation, or (4) auditing student assistance programs. The Department of Education may then in turn redisclose whether a discrepancy results in an over or under award to its contractors and fact of discrepancy information to an applicant or other specified persons. The information disclosed is limited to the tax years required.

The proposal would expire for disclosure requests made after September 30, 2008.

Full disclosure of information to the Department of Education

The Secretary of Treasury is authorized to disclose (upon written request from the Secretary of Education) taxpayer identity information. In addition, in the case of a material discrepancy between the items on the student aid application and the taxpayer's return information, disclosure may be made for: (1) the taxpayer's filing status, (2) adjusted gross income, (3) total earnings from employment (including self-employment), (4) Federal income tax liability, and (5) type of return filed (hereinafter material discrepancy items). A material discrepancy is defined as a difference between such sets of not less than the greater of \$100 or one percent of the item shown on the return in the case of the adjusted gross income, total earnings from employment or Federal income tax liability, and any difference between such sets of information in the case of the filing status or type of return filed.¹³

Redisclosure of information to Department of Education contractors

Officers and employees of the Department of Education are authorized to disclose to contractors whether a material discrepancy results in an over or under award. For purposes of determining whether a material discrepancy has occurred, the Department of Education compares the student aid information supplied by the applicant to the material discrepancy items supplied by the IRS.

¹² Sec. 13(F)(i).

¹³ Sec. 13(F)(ii).

Fact of discrepancy redisclosure of information to an applicant or other persons

Officers, employees, and contractors of the Department of Education are authorized to disclose: (1) fact of a material discrepancy, (2) which items are discrepant, and (3) whether the discrepant items as shown on the return are greater than or less than items reported to the Department of Education. Under the proposal, disclosure may be made to: (1) the applicant,¹⁴ (2) an individual whose information is discrepant,¹⁵ (3) officers and employees of institutions of higher education, (4) officers and employees of State agencies, and (5) auditors.

Funding

Under the proposal, the information described above may be disclosed only if there is in effect an agreement between the Secretary of Treasury and the Secretary of Education under which the Secretary of Education makes periodic payments to the Secretary of Treasury to: reimburse the Secretary of Treasury for costs incurred and cover the cost to the Secretary of Treasury of monitoring compliance by the Secretary of Education.

Effective Date

The proposal is effective with respect to disclosures made after the date of enactment.

¹⁴ The applicant is defined as a person who has applied for a grant, loan, benefit, or work assistance under title IV of the Higher Education Act of 1965 or a person who is seeking an income contingent repayment on an “applicable student loan.” Sec. 13(F)(i)(I) and (II). An applicable student loan means any loan made under an authorized program under part D of title IV of such Act and any loan made under part B or E of such Act that is in default and has been assigned to the Department of Education. Sec. 13(F)(iii).

¹⁵ Information that is specific to an individual may only be redisclosed to the individual whose information is discrepant and to the Department of Justice for purposes of collecting overpayments of grants or loans (including by means of litigation). Sec. 13(D).